

# Agenda

## Town of Seekonk, MA Planning Board

09/09/14

7:00 PM

Seekonk Town Hall  
Planning Board Meeting Room

### Type of meeting:

Planning Board Regular Meeting, Public Hearing

**Agenda topics** – More information on each item can be found on our website – [www.seekonk-ma.gov](http://www.seekonk-ma.gov) under Departments>Planning>Agenda Items

7:00 PM

### Public Hearing

Zoning Bylaw Amendment: Reorganization

Planning Board

### Public Hearing

Subdivision Rules and Regulations Amendments

Planning Board

Charter Amendments

Planning Board

Discussion: Non-Conformities Section-Zoning Bylaw  
Amendment

Planning Board

Correspondence:

Approval of Minutes: 8/12/14

Adjournment

## 6.1 Bond or Security

The developer shall file a security in the amount deemed by the Planning Board -to be sufficient to cover the estimated cost of all required work at the expiration of the time period specified by the applicant for the performance of said work. If at the elapse of the time period specified by the developer, the security shall be in automatic default. This period may be extended by vote of the Board of a specified time upon a written request of the developer, concurred in by surety, if any, and in writing.

The applicant may select from the following methods of security, and may from time to time vary the method or combination of methods:

1. Proper bond, sufficient in the opinion of the Planning Board to secure performance of the construction of ways and the installation of municipal services required for lots in the subdivision;
2. Deposit of money, or negotiable securities, such as certified check, savings passbook accompanied by a signed withdrawal slip and an assignment of the account to the Town, savings certificates assigned to the Town and acceptable to the Town;
3. Covenant, executed and duly recorded, running with the land, whereby ways and services shall be provided to serve any lot before such lot may be built upon or conveyed, other than by mortgaged deed;
4. Agreement executed after the recording of a first mortgage covering the premises shown on the plan or a portion thereof given as security for advances to be made to the applicant and the lender and shall provide for the retention by the lender of funds sufficient to secure the construction.

The Board shall not accept a covenant not to build on an individual lot as surety to guarantee the installation of infrastructure that is required to serve other lots.

The Board shall not accept a letter of credit as surety, since a letter of credit is not negotiable security as required under G.L. c.41, §81U, ¶7(2).

## 8.1 General

- 8.1.1 No water main, drain, catch basin, utility, road subgrade or surface or any other improvement shall be backfilled, paved over or otherwise permanently covered until inspected by the Board or the Board's Agent, who shall confer with the Public Works Department and Water District in the field at the site, and found to be in conformance with these Rules and Regulations and applicable Town specifications.

8.1.2 The Planning Board shall provide the subdivider with a checklist of those improvements which are to be inspected and designate the appropriate Inspector. Refer to checklist, "Inspection of construction", Form K.

8.1.3 The subdivider shall notify, in writing, the designated inspector or if he is not available, the Planning Board, at least two full working days prior to the time of each required inspection. The subdivider shall provide safe and convenient access to all parts of work to be inspected.

8.1.4 No work will be approved unless it has been inspected, and any work covered before being inspected shall be uncovered and inspected at the owner's expense, unless the applicant has requested such an inspection and the Planning Board or its agents did not inspect the work within one week through no fault of the applicant.

8.1.5 Standards of construction not otherwise specified hereunder shall be according to the latest standards of Mass Highway.

8.1.6 No clearing or cutting shall commence for any phase of the project until the Pre-Construction Checklist has been submitted, which is found in the rear of this publication.

8.1.7 Any violations of an approved Conservation Subdivision Definitive Plan shall be subject to a fine as described in the Penalty for Violations section of the Zoning Bylaws. Violations of all other Definitive Plans shall be subject to the enforcement provisions of MGL Chapter 41, Section 81Y.

## SECTION 5. NONCONFORMING USES SITUATIONS

### 5.1—DEFINITION

~~Any lawful building or structure or any lawful use of land, building, or structure which is not an authorized use in the district in which it is located by virtue of the adoption or subsequent amendment of these By-Laws is a nonconforming use.~~

*This definition should be moved to the Definitions section of the bylaw. This was proposed within the re-organized bylaws developed under this contract, which were intended to keep the existing content intact.*

*For these amendment recommendations specific to non-conformity, we recommend that the definition for nonconforming use/structure be removed, and replaced with the following definitions:*

*NONCONFORMING SITUATIONS: For the purposes of this Bylaw nonconforming situations are those uses, buildings, structures, lots, parking spaces, signs, landscaping and other activities that are now subject to the provisions of this Bylaw which were lawful before this Bylaw was adopted, or before amendments to this Bylaw which are applicable to the situation were adopted, and that do not now conform to the provisions of this Bylaw.*

*NONCOMPLYING SITUATIONS: Those uses, buildings, structures, lots, parking spaces, signs, landscaping and other activities that are subject to the provisions of this Bylaw, which were unlawfully created after this Bylaw was adopted, or after amendments to this Bylaw, which are applicable to those situations were adopted, are in violation of this Bylaw and may be called noncomplying situations.*

*The definition of “nonconforming situations” introduces the concept that the types of nonconformity extend beyond “uses” and “structures.” The definition of “noncomplying situations” makes a clear distinction between situations which are legitimately “grandfathered” under G.L. c. 40A § 6 (i.e., lawfully nonconforming situations) and those that do not enjoy statutory protection (i.e., noncomplying situations).*

### **5.25.1 APPLICABILITY**

Except as hereinafter provided, the provisions of this section shall apply to: Nonconforming Situations and Noncomplying Situations, as defined in Section 2, Definitions, of these zoning bylaws.

*The new language provided above references the enumeration for the Definitions section at the time of the development of these amendments. The proposed Definitions section within the re-organized bylaws developed under this contract is Section 1.3.*

~~5.2.1—Any change to or substantial extension of a nonconforming use of a building, structure, or parcel of land;~~

~~5.2.2—A building or special permit issued after first notice of public hearing on a zoning By-Law or amendment that would cause such use, building or structure to become nonconforming;~~

~~5.2.3—Any reconstruction, extension or structural change of a nonconforming structure;~~

~~5.2.4—Any alteration of a structure, begun after the first notice of a public hearing on a zoning By-Law or amendment that would cause the use of a structure to become nonconforming, to provide for the structure's use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.~~

## **5.2 OBJECTIVES**

The provisions of this article are intended to achieve the following purposes:

- (1) To allow nonconforming situations to continue until they are discontinued or abandoned;
- (2) To encourage change in nonconforming situations toward greater compliance with the provisions of this Bylaw and to reduce the degree of nonconformity;
- (3) To permit, as provided for hereunder, some expansion of nonconforming buildings provided there such expansion shall not be substantially more detrimental to the neighborhood than the existing building;
- (4) In the event of the involuntary destruction of a nonconforming situation, to permit, as provided for hereunder, the reconstruction of the nonconforming situation so that the owner and tenants, if any, are not subjected to substantial economic loss while, at the same time, seeking to achieve greater conformity with the provisions of this Bylaw and to reduce any adverse impacts on the surrounding area; and
- (5) To permit, as provided for hereunder, the treatment of nonconforming situations to be varied by the type of zoning district and the type of nonconformity, i.e. to have a different approach for uses, structures, parking spaces, or lots.

*The new “Objectives” section provided above is intended to set the stage for this section of the zoning bylaw and outline why this bylaw is in place.*

## **5.3 EXTENSION GENERAL PROVISIONS**

### **5.3.1 Right to Continue Nonconforming Situations**

~~Pre-existing legal nonconforming structures or uses may be extended or altered by special permit upon a finding by the Zoning Board of Appeals that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. A use, building, structure, parking space, sign, landscaping or any other activity which is a Nonconforming Situation, but not a Noncomplying Situation, may be continued but shall not be increased or expanded except as specifically~~

authorized hereunder. If such a Nonconforming Situation is abandoned or terminated, as provide for hereunder, it shall not be resumed except in compliance with this Bylaw.

~~Pre-existing legal nonconforming structures or land used for the primary purpose of agriculture, horticulture, or floriculture on parcels of more than five acres in size may be expanded or reconstructed even if it prolongs the use of a nonconforming structure. However, the reconstruction or expansion shall conform to the dimensional regulations for the district if such regulations would not prohibit the re-establishment of the agricultural use or structure. For such purposes land divided by a public or private way or waterway shall be construed as one parcel.~~

*The existing language only references non-conforming uses or structures, and is silent on the issues of lawfully versus unlawfully created nonconformities, which are included below.*

### 5.3.2 Determination of Status of Nonconforming Situations.

5.3.2.1 A use, building, structure, lot, parking space, sign, landscaping or any other activity is considered to be lawfully created, with respect to zoning requirements, and, therefore, a Nonconforming Situation, if:

- (a) It was in existence on November 14, 1942, when the Zoning Bylaw was originally adopted; or
- (b) Subsequent to November 14, 1942, it was permitted by right by the Zoning Bylaw and was in existence prior to the effective date of any amendment which rendered it nonconforming, and, if required at the time of its creation, a building permit or certificate of occupancy was issued.

5.3.2.2 If the records of the Building Department are incomplete, the Building Official may accept such evidence of lawful creation for those years as he/she may deem to be adequate in lieu of official Town records.

*The language above is to aid in the reasonable administration of the Bylaw by the Building Department, and to avoid unnecessary litigation.*

### 5.3.3 Special Permit and Variance Uses shall not be Nonconforming Situations.

5.3.3.1 A use, building, structure, lot, parking space, sign, landscaping or any other activity which is not otherwise permitted by right and does not comply with this Bylaw, but is allowed by issuance of a perfected variance or special permit, is not a Nonconforming Situation, and shall not be entitled to the treatments or benefits afforded hereunder and shall be bound to the conditions of the special permit or variance, as granted; and

3.3.3.2 In the case of a special permit or variance which is not entitled to treatment as a Nonconforming Situation, the Board of Appeals may grant an additional special permit or variance relief which has the effect of extending such special permit or

variance for an additional period of time provided such special permit or variance is subject to conditions that:

(a) Are not more permissive than those in the most recently approved special permit or variance; and

(b) Bring the situation closer to compliance with the provisions of this Bylaw.

*The language above clarifies the distinction between nonconforming situations that were created by special permit, and those that were created by right, and treats the former more strictly.*

#### 5.3.4 Loss of Nonconforming Situation Status

Once a Nonconforming Situation comes into conformity or becomes closer to conformity with this By-law, it shall not revert.

Once a use, building, structure, lot, parking space, sign, landscaping or any other activity which had been nonconforming is brought into conformity with this Bylaw, it shall not be permitted to revert to nonconformity.

Once a use, building, structure, lot, parking space, sign, landscaping or any other activity which is nonconforming is brought into closer conformity with this Bylaw, i.e. the amount or degree of nonconformity is reduced, it shall not be permitted to revert to nonconformity with the provisions of this Bylaw which is greater than the closest amount or degree of conformity which it has achieved.

#### **5.4 — EXEMPTIONS**

~~The following buildings, structures or use of land, building or structures are exempted from the provisions of this section:~~

~~5.4.1 — Structures or uses lawfully in existence or lawfully begun, or building or special permits issued, before the first publication of notice of the public hearing on a zoning By-Law or amendment which would cause the structure or use to become nonconforming, provided that construction or operations under a building or special permit shall conform to any subsequent amendment of this By-Law unless the use or construction is commenced within a period of not more than six months after the issuance of the permit, and, in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.~~

~~5.4.2 — Alteration, reconstruction, extension or structural change to a single or two-family residential structure where such action(s) does not increase the nonconforming nature of said structure.~~

~~5.4.3 — Any increase in area, frontage, width or yard or depth requirements of this By-Law shall not apply to a lot for single and two-family residential use which, at the time of recording or~~

endorsement, whichever occurs sooner, was not held in common ownership with any adjoining land, conformed to then existing requirements and has less than the proposed requirement but at least 5,000 square feet of area and fifty feet of frontage.

#### 5.3.5 Change in lot which results in noncompliance.

- 5.3.5.1 No lot, upon which there is a building or for which a building permit is in force shall be subdivided or otherwise changed in area or shape, except through public acquisition, so as to result in a violation of the requirements of this Bylaw or in an increase in violation of the requirements of this By-law.
- 5.3.5.2 A lot already nonconforming shall not be changed in area or shape so as to increase the degree of nonconformity with the requirements of this Bylaw;
- 5.3.5.3 A nonconforming lot may be changed in area or shape to move closer to conformity with the requirements of this Bylaw, provided that no new buildable lot shall be created as a result.
- 5.3.5.4 If land is subdivided, conveyed or otherwise transferred in violation hereof, no building permit, special permit, certificate of occupancy or approval of a subdivision plan under the Subdivision Control Law shall be issued with reference to said transferred land until both the lot retained and the newly created lot(s) meet the requirements of this Bylaw.

#### 5.3.6 Nonconforming Situation Status resulting from public action.

If, as a result of public acquisition, a use, building, structure, lot, parking space, sign, landscaping or any other activity no longer complies with this Bylaw, it shall be considered to be nonconforming and entitled to the treatment afforded by this Section 5 provided it was in compliance at the time of the public acquisition.

*The provision above is inserted to help the Town avoid unnecessary complications resulting from land takings. The most common example is one where the Town takes or acquires a strip of land from an undersized lot in order to widen a street or intersection. Without this provision, such acquisitions could leave the property owners exposed to zoning enforcement problems, requiring variances or leaving the Town exposed to higher damage claims.*

### **~~5.5 DISCONTINUANCE OF A NONCONFORMING USE~~**

~~No building, structure, or premises where a nonconforming use, other than an agriculture, horticulture, or floriculture use, has ceased for more than two years shall again be devoted to a nonconforming use. No nonconforming agricultural, horticultural, or floricultural use on a parcel of five acres or less in size in areas not zoned for agriculture, horticulture, or floriculture which as ceased for more than five years shall be devoted to a nonconforming use.~~

#### 5.3.7 Discontinuance or abandonment.

5.3.7.1 A Nonconforming Situation shall constitute legal discontinuance whenever the Nonconforming Situation is not used for a period of twenty four (24) consecutive months and it shall not begin again except in conformance with this By-law.

5.3.7.2 A Nonconforming Situation shall be legally abandoned if it is established that the owner does not intend to resume the Nonconforming Situation and it shall not begin again except in conformance with this By-law.

5.3.7.3 Discontinuance or abandonment of a part of a Nonconforming Situation shall not normally be considered to be evidence of discontinuance or abandonment of the entire Nonconforming Situation, unless the part that is discontinued or abandoned is the part which causes the nonconformity for the Nonconforming Situation.

5.3.7.4 Voluntary demolition of a building, structure or other physical Nonconforming Situation, without a prior determination by the Board of Appeals that it may be rebuilt, shall constitute conclusive evidence of legal abandonment and it shall not be rebuilt except in conformance with this By-law.

5.3.7.5 The rights of a Nonconforming Situation shall not be affected by a change in ownership, tenancy or management.

#### **5.4 NONCONFORMING SITUATIONS - USES**

5.4.1 A Nonconforming Situation that involves a use may be continued to the same degree and for the same purpose as the original nonconforming use, but the nonconforming use may be altered, expanded or extended only upon issuance of a special permit from the Board of Appeals in accordance with the provisions of Section 11, provided further only if the Board of Appeals finds such alteration, expansion or extension shall not be substantially more detrimental to the neighborhood than the existing nonconforming use.

A Nonconforming Situation that involves a use may be considered to be altered, expanded or extended if there is a net increase in floor area, or an increase in the number of employees, or a substantial increase in the number of automobile or truck traffic generated by the use, or an increase in the hours of operation, or a change from seasonal to full-time operation, since the use first became nonconforming.

*The new language provided above references the enumeration for the Special Permits section at the time of the development of these amendments. The proposed Special Permits section within the re-organized bylaws developed under this contract is Section 2.2.*

5.4.2. A Nonconforming Situation that involves a use shall be limited to the lot on which it is located and it shall not be relocated to another lot.

5.4.3 Alteration, extension or expansion of a Nonconforming Situation that involves a use shall only be allowed by special permit by the Board of Appeals and then only if the alteration, extension or expansion does not increase the total of all floor area plus open

ground area of the premises devoted to the use by more than fifty (50) percent. Any increase in size shall be measured against the total floor area plus the open ground area that existed at the time the use became nonconforming. This restriction shall not apply to agricultural, horticultural or floricultural uses.

## **5.5 NONCONFORMING SITUATIONS - BUILDINGS**

### **5.5.1 One-family or two-family dwelling.**

An existing nonconforming one-family or two-family dwelling which is a Nonconforming Situation as a result of nonconformance with respect to a minimum yard setback may be enlarged or extended in any other direction in compliance with this Bylaw by the issuance of a building permit. Any other change, extension, or alteration of one-family or two-family dwelling which is a Nonconforming Situation may be permitted upon issuance of a special permit by the Zoning Board of Appeals which determines that such enlargement or extension shall not increase the nonconforming nature of the structure, or that such enlargement or extension shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

*The current Zoning Bylaw does not include this provision. Thus, under G.L. c. 40A, unless this provision is included, the Board of Appeals would be required to issue a special permit for any change to a one- or two-family dwelling with a nonconforming setback; even if the change was compliant with all existing dimensional controls. By providing this exemption, you avoid sending residents to the Board of Appeals in situations where it will only waste everyone's time.*

5.5.2 An existing nonconforming building, other than a one-family or two-family dwelling, which is a Nonconforming Situation due only to a minimum yard setback may be enlarged or extended in any other direction as of right in compliance with this Bylaw (including compliance with Site Plan Approval requirements, where applicable) by the issuance of a building permit, provided all other uses, structures and activities on the lot comply fully with the requirements of this Bylaw.

5.5.3 An existing building, other than a one-family or two-family dwelling, which is a Nonconforming Situation as a result of nonconformance with respect to another requirement of these zoning bylaws, other than a minimum yard setback, may be enlarged or extended with a special permit from the Board of Appeals in accordance with the provisions of Section 11 of this Bylaw, provided that the Board of Appeals finds that such enlargement or extension shall not be substantially more detrimental to the neighborhood than the existing Nonconforming Situation.

*The new language provided above references the enumeration for the Special Permits section at the time of the development of these amendments. The proposed Special Permits section within the re-organized bylaws developed under this contract is Section 2.2.*

### **5.5.4 Noncomplying Situations - Buildings.**

5.5.4.1 If a building, or a part of a building is a Noncomplying Situation because it does not comply with either the dimensional standards in these By-laws, except for minimum lot area or minimum lot frontage, or those that were in effect when it was constructed, but the building was constructed in accordance with a building permit issued by the Town except for such dimensional noncompliance, it shall be considered to be a nonconforming building, and entitled to treatment as such, if the following conditions are met:

- (a) The noncompliance has existed for at least six (6) years during which time no enforcement action under the provisions of these bylaws has been taken; and
- (b) The noncompliance was not created or increased by changes in lot lines after the construction of the building.

5.5.4.2 If a building, or a part of a building is a Noncomplying Situation because it does not comply with the dimensional standards in these Bylaws, except for minimum lot area or minimum lot frontage, or those that were in effect when it was constructed; and conditions in Subsection 5.5.4.1(a) and (b) above are met but the building was not constructed in accordance with a building permit duly issued or there is no evidence a building permit was issued, then the Board of Appeals may grant a special permit for the continued use of the building under the provisions of Section 11, provided that the Board of Appeals expressly finds that the nonconforming building is compatible with the neighborhood and that it complies with the criteria set forth in Section 5.3.2.

*The section above provides a more complete form of amnesty for buildings constructed in violation of the Zoning Bylaw, but against which the statute of limitations for enforcement has expired. The new language provided above references the enumeration for the Special Permits section at the time of the development of these amendments. The proposed Special Permits section within the re-organized bylaws developed under this contract is Section 2.2.*

## **5.6 NONCONFORMING LOTS**

5.6.1 No lot which does not comply with the provisions of this Bylaw with respect to minimum lot area, minimum lot frontage, or with the requirements then in effect at the time of recording or endorsement, whichever occurs sooner, shall be subdivided or otherwise changed in area or shape, except through public action, so as to be in violation of the provisions of this Bylaw. A lot already nonconforming with respect to those provisions shall not be changed in area, or shape so as to increase the degree of noncompliance. A lot which is nonconforming with respect to those provisions may be changed to be made closer in compliance, but once brought closer into compliance, i.e. the amount or degree of nonconformity is reduced, shall not be permitted to revert to noncompliance which is greater than the closest amount or degree of compliance which it has achieved.

5.6.2 A one-family or two-family dwelling shall not be deemed a nonconforming building solely due to the lot's deficiency in area or frontage, and may be changed extended or

altered by right (but a single-family-dwelling use may not be changed as of right to a two-family use) if otherwise in conformity with the dimensional requirements in these zoning bylaws. In all other cases, the change, extension, or alteration of a building on a nonconforming lot shall require a special permit under Section 11.

*Again, this section provides for expansion or alteration of single- or two-family dwellings without a special permit from the Board of Appeals, provided the addition, alteration or extension meets all other dimensional requirements of the zoning bylaws. The new language provided above references the enumeration for the Special Permits section at the time of the development of these amendments. The proposed Special Permits section within the re-organized bylaws developed under this contract is Section 2.2.*

## **5.7 NONCONFORMING OFF-STREET PARKING**

5.7.1 Existing nonconforming parking spaces. Any off-street parking space in existence on the effective date of this Bylaw or thereafter established, which serves a building or use, may not be changed in number, or changed in location or design contrary to the requirements of Section 10.6.1 so as to increase the degree of nonconformity with the requirements of Section 10.6.1.

5.7.1.1 If a Nonconforming Situation involves the use of an existing structure or lot which does not have sufficient parking, including a use that has no off-street parking and is proposed to be changed to a different type of use for which a different number of parking spaces is required as set forth in Section 10.6.1 and there is no increase in the net floor, the following rules shall apply:

- (a) If there is a net increase in the number of required parking spaces, that net increase shall be provided, which number shall not include any existing parking spaces; and
- (b) If there is a net decrease in the number of required parking spaces, the spaces provided in the existing parking area shall be sufficient.

5.7.1.2 If it is proposed to increase the net floor area of a building, whether by addition to the exterior of the building or by internal reconstruction, and the building does not have sufficient off-street parking, full compliance with Section 10.6.1 for the entire building shall be a condition of the issuance of a building permit for the construction of the increase of net floor area; and

5.7.1.3 An applicant seeking credit for existing parking spaces shall first submit an off-street parking plan, as provided in Section 10.6.1, certified by a registered land surveyor or professional engineer. If the existing paved area is not marked off into parking spaces or loading bays, such spaces or bays, complying with Section 10.6.1 shall be delineated on the plan. To qualify, an existing parking space shall be entirely on the lot.

## 5.7.2 Parking requirements for a building destroyed, damaged or demolished.

5.7.2.1 If a Nonconforming Situation involves a building, for which sufficient off-street parking is not provided, is destroyed, damaged or voluntarily demolished by the owner, the building may be reconstructed or replaced, if otherwise permitted by this Bylaw, without providing additional parking spaces provided the new use is the same type of use as the use before the destruction, damage or demolition, or is a type of use that requires the same or fewer parking spaces. If parking spaces were provided before the destruction, damage or demolition, at least the same number of spaces shall be provided; and

5.7.2.2 If the new use is a different type of use, for which a greater number of parking spaces is required, or if more net floor area is to be constructed than previously existed, full compliance with Section 10.6.1 for the entire building shall be a condition of the issuance of any building permit for the reconstruction or replacement of the building.

*This section is included in order to minimize against the loss of parking due to expansion of a use or structure. Any use or expansion requiring addition off-street parking will require review and approval from the Planning Board prior to issuance of the building permit.*

*The new language provided in the section above references the enumeration for the Parking Requirements section at the time of the development of these amendments. The proposed Parking Requirements section within the re-organized bylaws developed under this contract is Section 8.1.*

## **5.8 OTHER NON-CONFORMITIES**

5.8.1 Non-Conforming Situations related to signs are addressed in Section 8.9 of this By-Law

5.8.2 Where other performance standards in this By-Law create non-conforming situations for landscaping and lighting, these situations may continue and routine maintenance may be performed to maintain these site features in a manner that does not increase the non-conformity. Where non-conforming light fixtures and standards are being replaced, new lighting shall be provided in accordance with the By-Law. Where non-conforming landscaping is being replaced, or where site improvements require the installation of new landscaping, this landscaping shall comply with the provisions of this By-Law.

## **5.9 REPAIR AND RECONSTRUCTION OF NONCONFORMING SITUATIONS**

5.9.1 Routine maintenance and repairs shall be permitted as of right for Nonconforming Situations.

5.9.2 Any Nonconforming Situation which is damaged or destroyed for reasons that were beyond the control of the owner may be reconstructed as of right, provided that there is no increase in the site coverage or gross floor area and there is no increase in the degree

of nonconformity and provided further that such any reconstruction shall be begun within two years of such damage or destruction and continued without interruption until completion.

503565/SEEK/0085

## MEMORANDUM

**TO:** Seekonk Board of Selectmen and Town Administrator  
**FROM:** Lauren Goldberg, Kopleman and Paige  
**DATE:** September 3, 2014  
**RE:** Possible Charter Amendment Language to Address Appointing Authority Issues

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*One option is to revise Article 6, Section 6 so as to streamline it and make it more user-friendly. Despite the different format, however, the below draft language is intended to limit actual changes to only those discussed by the representatives from the various affected boards. However, there is additional language, inserted as Chapter 6, Section 6(B)(iv), intended to address concerns about not having someone in these key department head positions for an extended period of time, while still leaving the affected boards with bottom line authority over who is appointed to the permanent position.*

Section 6. Appointment Recommendations of the Administrator

(A) Recommendations to the Board of Selectmen

- i. Appointment of the following board and commission members:  

(repeat list from existing Section 6)
- ii. Appointment of the following town officers:  

(repeat list from existing Section 6)
- iii. Recommendations made by the Town Administrator under this Section 6(A) shall take effect on the fifteenth (15<sup>th</sup>) day following the day on which notice of the appointment is filed with the Board of Selectmen unless the Board of Selectmen shall, within said period, by a majority vote of the Board, vote to reject any such recommendation or has voted to sooner affirm the appointment.
- iv. Other committees appointed by the Board of Selectmen pursuant to MGL, Town Bylaws or Town Meeting action.

(B) Recommendations to Other Boards

- i. Appointment of the following town officers, subject to an appropriation therefor:

<u>Board</u>	<u>Town Officer</u>
Board of Assessors	Principal Assessor
Planning Board	Town Planner
Board of Health	Health Agent
Conservation Commission	Conservation Agent

- ii. Individuals appointed hereunder shall be selected on the basis of educational qualifications, training and experience and shall not simultaneously be a member of the board to which the recommendation is made
  - iii. Recommendations made by the Town Administrator under this Section 6(B) shall take effect on the fifteenth (15<sup>th</sup>) day following the day on which notice of the appointment is filed with the identified board, unless such board shall, within said period, by a majority vote of that board, vote to reject any such recommendation or has voted to sooner affirm the appointment.
  - iv. If the board to which the recommendation is made under Section 6(b)(i) rejects two consecutive recommendations made by the Town Administrator, the Town Administrator may make a temporary appointment to the position not to exceed three months.
- (C) Except as otherwise specifically provided in Section 6(b)(iv), the board or commission members and officers of the town appointed under this article shall serve for three (3) year terms, unless otherwise removed as provided in Article Eight, or removed in accordance with the provisions of the town's personnel by-law.
- (D) The Town Administrator shall supervise and direct all appointed town officers with respect to day-to-day administrative and operational matters in a manner consistent with the town's personnel policies, and any collective bargaining agreements or contracts that may be applicable; provided however that the Town Administrator shall not supervise or direct such officers with regard to their respective powers and duties as specified by state law, special law, town by-laws, or this charter, unless the elected or appointed boards with authority to provide such supervision and direction request the Town Administrator to do so and the Town Administrator and Board of Selectmen agree to the same.

*The second option is to amend the existing language of Article 6, Section 6 by revising the same to include the qualification for the appointee and the appointing authority process by board and position, as well as the new language concerning supervisory issues (with the new language in bold). We can work on the warrant article/special act language later, although the below provides the substance of the revised (or new, in the case of the Conservation Commission) language for each board and commission.*

The Board of Assessors elected under this article shall **appoint**, subject to **an** appropriation made for this purpose, an individual qualified to provide professional assistance to the town's assessing functions and responsibilities. **This individual shall be appointed by a recommendation of the Town Administrator, which appointment shall become effective on the fifteenth (15<sup>th</sup>) day following the day on which notice of the appointment is filed with the Board of Assessors unless the Board of Assessors shall, within said period, by a majority vote of the board, vote to reject any such recommendation or has voted to sooner affirm the appointment.** Such an appointed individual shall not simultaneously be employed by any company or business that provides assessing services while serving as an employee of the town. **In the event the Board of Assessors rejects the recommendation of the Town Administrator on two consecutive occasions, the Town Administrator may make a temporary appointment to the position for a period not to exceed three months.**

The Planning Board elected under this article shall **appoint**, subject to an appropriation made for this purpose, a Planner to be selected on the basis of educational qualifications, training, and experience, and who shall not simultaneously hold Planning Board membership. **This individual shall be appointed by a recommendation of the Town Administrator, which appointment shall become effective on the fifteenth (15<sup>th</sup>) day following the day on which notice of the appointment is filed with the Planning Board unless the Planning Board shall, within said period, by a majority vote of the board, vote to reject any such recommendation or has voted to sooner affirm the appointment. In the event the Planning Board rejects the recommendation of the Town Administrator on two consecutive occasions, the Town Administrator may make a temporary appointment to the position for a period not to exceed three months.**

The Board of Health **appointed under this article** shall appoint, subject to an appropriation made for this purpose, a Health Agent to be selected on the basis of educational qualifications, training, and experience, and who shall not simultaneously be a member of the Board of Health. **This individual shall be appointed by a recommendation of the Town Administrator, which appointment shall become effective on the fifteenth (15<sup>th</sup>) day following the day on which notice of the appointment is filed with the Board of Health unless the Board of Health shall, within said period, by a majority vote of the board, vote to reject any such recommendation or has voted to sooner affirm the appointment. In the event the Board of Health rejects the recommendation of the Town Administrator on two consecutive occasions, the Town Administrator may make a temporary appointment to the position for a period not to exceed three months.**

The Conservation Commission appointed under this article shall appoint, subject to an appropriation made for this purpose, a Conservation Agent to be selected on the basis of educational qualifications, training, and experience, and who shall not simultaneously be a member of the Conservation Commission. **This individual shall be appointed by a recommendation of the Town Administrator, which appointment shall become effective on the fifteenth (15<sup>th</sup>) day following the day on which notice of the appointment is filed with the Conservation Commission unless the Conservation Commission shall, within said period, by a majority vote of the board, vote to reject any such recommendation or has voted to sooner affirm the appointment. In the event the Conservation Commission rejects the recommendation of the Town Administrator on two consecutive occasions, the Town Administrator may make a temporary appointment to the position for a period not to exceed three months.**

The Town Administrator shall supervise and direct all appointed town officers with respect to day to-day administrative and operational matters in a manner consistent with the town's personnel policies, and any collective bargaining agreements or contracts that may be applicable; provided however that the Town Administrator shall not supervise or direct such officers with regard to their respective powers and duties as specified by state law, special law, town by-laws, or this charter, unless the elected or appointed boards with authority to provide such supervision and direction request the Town Administrator to do so and the Town Administrator and Board of Selectmen agree to the same.

# ***TOWN OF SEEKONK***

## ***Planning Board***

### **MEMORANDUM**

**To:** The Planning Board

**From:** John P. Hansen Jr., AICP, Town Planner

**Date:** September 2, 2014

**Re:** August monthly report

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#### **BYLAWS**

##### Zoning Bylaw rewrite

- Public hearing 9/9/14; To be on Fall TM
- Economic Development Committee reviewing sign bylaw; Adoption to be held off for Fall TM
- First draft of non-conforming section written

#### **PLANS**

##### Master Plan

- Energy Committee members solicited
- Economic Development Committee held first official meeting

#### **MISC**

##### Luthers Corners Safety Improvement Project

- Design on-going; To be constructed in 2017

#### **SUBDIVISIONS**

##### Orchard Estates (off School St)

- Binder course of asphalt installed

Tall Pines (off Brook St)

- Binder course of asphalt installed

Madison Estates (off Read St)

- Binder course of asphalt installed

Caleb Estates (off Olney St)

- Binder course of asphalt installed

Ricard St. Extension

- Binder course of asphalt installed

Pine Hill Estates (off Newman Ave)

- Binder course of asphalt installed

Jacob Hill Estates (off Jacob St)

- Drainage installed

Country Brook Estates (off Arcade Ave)

- Definitive Plan approved

Summer Meadows (off Warren Ave)

- Binder course of asphalt installed

**SITE PLANS**

Swan Brook Assisted Living (on Rt. 6)

- Applicant appealing DEP ruling on sewer treatment facility requirement to Superior Court; Applicant to go forward with first phase of project; Response from applicant to consultant's drainage comments still needed.

92 Pond St.

- Site plan submitted for contractor business; Awaiting response from applicant to consultant's comments

Longhorn

- Site Plan compliance check performed; To open 9/8/14.

## John Hansen

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**From:** John Hansen  
**Sent:** Tuesday, August 26, 2014 2:03 PM  
**To:** Testa, Christina P.  
**Subject:** RE: 9 Warren Avenue - Comprehensive Permit

Dear ZBA:

This project will help fulfill our goal of having more affordable housing in Town. As you are aware we have very little such housing (approx 1.5% of the total housing stock) and the State mandate is 10%. Additionally this project's location (close to Rt. 6) and density (adjacent to R-1 zoning district) appear appropriate given the surrounding neighborhood. The location of the actual affordable units should be checked by the State as prior communications (January site visit) with DHCD (Toni Hall) indicated that these units should not be clustered in the two front units (one in a front unit and one in a back unit).

John P. Hansen Jr., AICP

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**From:** Testa, Christina P.  
**Sent:** Tuesday, August 26, 2014 1:56 PM  
**To:** John Hansen; Beth Hallal; [chiefmace@seekonkpd.com](mailto:chiefmace@seekonkpd.com); John Santos; Rob Bernardo ([robbernardo@verizon.net](mailto:robbernardo@verizon.net))  
**Subject:** 9 Warren Avenue - Comprehensive Permit

At the August 25, 2014 ZBA meeting, the Board opened the public hearing for 9 Warren Avenue. The applicant advised the Board that a copy of the application and plans were submitted to each department head for comments.

The Board would appreciate input from each department if there is information you might have that would help the Zoning Board render a decision. Please forward any comments by September 15 so the Board members can review it prior to their next meeting on September 22<sup>nd</sup>.

Thanks,  
Chris

Christina Testa & Florice Craig  
Planning/Zoning Board of Appeals Secretaries  
100 Peck Street  
Seekonk, MA 02771

Phone: 508-336-2961  
Fax: 508-336-0764  
email: [ctesta@seekonk-ma.gov](mailto:ctesta@seekonk-ma.gov)

## **SEEKONK PLANNING BOARD**

### **Regular Meeting**

**August 12, 2014**

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Present: Ch. Abelson, R. Bennett, S. Foulkes, D. Sullivan, D. Viera  
J. Hansen, Town Planner  
Absent: M. Bourque (with cause) L. Dunn (with cause)  
7:00PM Ch. Abelson opened the meeting

#### **Covenant Release/Cash Surety Establishment Jacob Hill Estates – Palmer River Development, LLC**

J. Hansen summarized the applicant requested a release for the covenant and in its place cash surety in the amount of \$152,080.00. He asked the developer Matt Antonio if certain items indicated on the revised cost estimate had been done by the 8/12/14 deadline.

Matt Antonio said Item 27- Compaction of Road & Base had not been done and Item 29 - Stone Lined Drainage Swale, was 50% approved by GPI. He said all other items had been done. He noted J. Hansen proposed that additional cash surety should be posted for items not done or ask PB to approve the cash surety already paid in the amount of \$152,080.00 with the contingency GPI inspects items 27 & 29 to their satisfaction.

**A motion was made and voted unanimously to approve the request for the release of the covenant on Jacob Hill Estates and establish cash surety in the amount of \$152,080.00. The covenant document will be held until either the cash to cover is given, or until items 27 & 29 are completed, inspected and approved by GPI.**

**PB Chairman was authorized to sign the document when work is completed.**

#### **Discussion: Zoning Bylaw Update/Temporary Sign Bylaw Amendment**

J. Hansen summarized the zoning bylaw amendments did not go to the Spring Town Meeting because the ZBA wanted another look at the bylaws. At the June 16, 2014 ZBA meeting the ZBA did not have any changes. He noted since there was time before the next town meeting he decided to have Town Council look at the bylaws from a legal aspect and they had no major changes. He said if the PB had no other changes they could hold a public hearing in September and put it on the warrant for the Fall Town Meeting.

S. Foulkes had several comments: the pagination needed to be proofed to make sure it was all in order before going to print. She also said where footnotes were indicated it needed to be proofread so they matched the section they were referring to.

In general the entire PB decided that the document needed to be proofread to make sure the footnotes correlate with the correct pages.

D. Sullivan requested the document be emailed to PB members once it was corrected. He said at that time PB members could have one last look and give any corrections to J. Hansen.

J. Hansen agreed.

### **Discussion: Zoning Bylaw/Temporary Sign Bylaw Amendment**

J. Hansen summarized that the PB had decided to hold off on the adoption of this at the Spring Town Meeting because of specific questions regarding the time frame of 120 days for temporary signs. He noted an actual example was included hoping that would clarify it.

D. Viera asked if there would be a penalty if it was violated.

J. Hansen said yes, it would be enforced by the Building Official.

### **Discussion: Solar Overlay District**

J. Hansen said at the last PB meeting it was discussed the possible inclusion of R4 districts in the overlay for large scale photovoltaic facilities. He did some research and noted on page 6, the highlighted copy, some standards that he had seen about visual impact and land clearing. He then asked the PB if they would want to include Highway Business and Local Business.

D. Viera said he would not want to exclude anybody.

Ch. Abelson said he might be concerned on how adjacent it was to the R1 zone.

There was further discussion about non-residential roof mounted/canopy solar.

J. Hansen said he would research non-residential canopy solar further.

### **Correspondence:**

J. Hansen said he wanted to follow up on an item that had to do with the upcoming public hearing on the subdivision standards. He noted the PB wanted Atty. Quirk's feedback on letters of credit, her feedback was, if the PB wasn't comfortable with them then they are not obligated to accept them. He said he would strike that from the draft. He went to say as far as violations he looked at other Towns and the Planning Handbook from the State and they all had the same conclusion; there are three ways to deals with violations;

- 1) seize the surety 2) don't accept the road 3) don't issue building permits.

He noted the PB had the ability to do all of those. He went on to say that it was in the draft regulations for the public hearing to state that the PB could, if it was a Conservation Subdivision, ask the Building Official to fine because it was in the Zoning Bylaws. Atty. Quirk said the PB

has the ability to go to the court system for any subdivision violations. In conclusion those were the options for violations going forward.

PB directed J. Hansen to write a letter to the Town Administrator on the status of the property on Maple Ave. and report back those comments to the PB at the next meeting.

**Approval of Minutes: 7/8/14**

**A motion was made and voted unanimously to approve the Planning Board Minutes of 7/8/14.**

**Adjournment**

**A motion was made and voted unanimously to adjourn at 8:45PM.**

Respectfully Submitted by,

Florice Craig